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IN THE

Supreme Court of the United States

October Term, 1954.

No. 183

SANTO CAMINITO,

Petitioner,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

Petition for a Writ of Certiorari to the Court of Appeals of the State of New York.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Santo Caminito, respectfully shows the following:

The Determinations in the Courts Below.

Petitioner was tried and convicted on March 2, 1942, in the County Court of Kings County, State of New York, for the crime of murder in the first degree, and based upon said conviction is presently serving a term of life imprisonment in the Auburn State Prison, Auburn, New York.

Subsequent to his conviction, the following appellate proceedings were had:

An appeal was taken to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, which Court affirmed the judgment of conviction on December 22, 1942 (265 App. Div. 960). No opinion was rendered, but in concurring the Presiding Justice made a short memorandum (appendix).

An appeal was taken to the Court of Appeals of the State of New York, which Court likewise affirmed the judgment of conviction, on July 20, 1943 (291 N. Y. 541).

The petitioner thereafter moved in person for a re-argument of said appeal to the Court of Appeals. The motion was denied on March 18, 1948 (297 N. Y. 882).

A second application for re-argument was thereafter denied by the Court of Appeals on June 3, 1954 (not yet reported).

No opinions were written in connection with any of the foregoing determinations.

Basis of Jurisdiction.

(i) The petition seeks a review of a final judgment of the Court of Appeals of the State of New York rendered October 24, 1942, which judgment was entered in the office of the County Clerk, Kings County, on January 7, 1943.

(ii) A motion to re-argue the appeal was made on May 17, 1954, which motion was denied on June 3, 1954. The said application for re-argument requested that a determination of rights previously adjudicated be altered, and raised questions of substance. The motion for a rehearing having been entertained (the disposition was a denial, not a dismissal of the motion), the ninety-day limitation during which this Court may entertain this petition begins to run from the date of such denial.

Citizens Bank v. Offerman (1919), 249 U. S. 448.
U. S. v. Seminole Nation (1936), 299 U. S. 417, 421.
Leishman v. Assoc. Electric Co. (1942), 318 U. S. 205.

As stated in the *Citizens Bank v. Offerman* case:

> "A petition to rehear was overruled May 18, 1917, and at that time the judgment below became final for purposes of review here. *Andrews v. Virginian Ry. Co.*, 248 U. S. 272; *Chicago Great Western R. R. Co. v. Basham, ante*, 164. This writ of error was applied for July 13, 1917—within three months" (p. 449).
>
> • • • • • •
>
> "Where a petition for rehearing is entertained the judgment does not become final for purposes of our review until such petition has been denied or otherwise disposed of and the three months' limitation begins to run from date of said denial or other disposition" (p. 450).

(iii) This Court has jurisdiction of this petition for certiorari under Sections 1257 (3) and 2101 (c) and (d), Title 28, United States Code, and Rule 38½ of the Rules of this Court (as well as Rule 22 of the Revised Rules of this Court, effective July 1, 1954), the petition being one to review the final judgment of a state court of last resort.

(iv) The Court of Appeals of the State of New York has decided federal questions of substance in a manner not in accord with applicable decisions of this Court.

The Questions Presented for Review.

1. Was there a violation of due process in admitting into evidence, over objection, confessions made by petitioner, where the undisputed evidence shows the following:

(a) that petitioner maintained his innocence for a period of twenty-seven hours;

(b) that the police officers committed a violation of the laws of New York in failing to take petitioner before a magistrate without unnecessary delay;

(c) that petitioner was intensively questioned for hours at a time, throughout his detention, by five or six police officers and that at least ten police officers participated in his questioning at various times;

(d) that petitioner was held incommunicado for forty hours and was kept unavailable to members of his family and a lawyer retained by his family, all of whom unsuccessfully attempted to see him;

(e) that petitioner was subjected to physical torture by being kept overnight in a cell without sleeping facilities;

(f) that petitioner was subjected to psychological pressures by being confronted by three detectives (not known by him to be detectives), each of whom falsely pretended to identify him as a participant in the crime;

(g) that petitioner was held without being arraigned for a period of forty hours;

(h) that there was no evidence identifying petitioner as a participant in the crime other than the petitioner's confessions.

2. On the basis of the foregoing facts, was petitioner unlawfully compelled to be a witness against himself?

Applicable Constitutional and Statutory Provisions.

(A) Constitution of the United States, Section 1 of the Fourteenth Amendment:

> "* * * nor shall any State deprive any person of life, liberty or property, without due process of law; * * *."

(B) Constitution of the United States, Fifth Amendment:

> "* * * nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law * * *."

(C) Constitution of the State of New York, Article 1, Section 6:

> "* * * nor shall he be compelled in any criminal case to be a witness against himself;
>
> "* * * No person shall be deprived of life, liberty or property without due process of law."

(D) Code of Criminal Procedure of the State of New York:

> (1) "Section 395. Confession of Defendant, When Evidence, and its Effect.
>
> "A confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats, or unless made upon a stipulation of

the district attorney, that he shall not be prosecuted therefor; but is not sufficient to warrant his conviction, without additional proof that the crime charged has been committed."

(2) "Section 165. Defendant, Upon Arrest, to be Taken Before Magistrate.

"The defendant must in all cases be taken before the magistrate without unnecessary delay, and he may give bail at any hour of the day or night."

(E) Penal Law of the State of New York:

"Section 1844. Delaying to Take Person Arrested for Crime Before a Magistrate.

"A public officer or other person having arrested any person upon a criminal charge, who wilfully and wrongfully delays to take such persons before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor."

(F) New York City Criminal Courts Act:

"Section 101. Courts to be Held Daily in Each District.

"Except as otherwise provided in this section, there shall be a city magistrate's court held daily in every court district, and unless otherwise directed by the chief city magistrate, each city magistrate's court shall be open every day at nine o'clock in the morning, and shall not be closed before four o'clock in the afternoon, and the city magistrate assigned thereto shall be in attendance thereat except during a reasonable recess."

Statement of Undisputed Material Facts.

The petitioner was convicted as an alleged participant in the murder of one Murray Hammerof, who was shot on February 16, 1941, and died on February 18, 1941.

Petitioner was taken into custody by the police at 6 P. M. on Sunday, May 11, 1941, almost three months later.

In setting forth the facts upon which this petition rests, we have deliberately separated undisputed facts from other assertions claimed by petitioner at the trial, in order to simplify and clarify the issues upon which this petition rests. Accordingly, we do not belabor the disputed questions of fact as to whether petitioner was physically beaten, threatened or kept without food for a period of almost two days, as to which facts there is ample evidence in the record. Instead, this application is confined to the facts which are clearly undisputed, all of which facts come from the testimony of the People's witnesses. References hereafter given are from the folios of the record on appeal submitted to the Court of Appeals of the State of New York.

The following are the undisputed facts, as testified to by the witnesses for the State of New York:

1) Defendant was taken into custody on Sunday, May 11, 1941, at 6 P. M. (147).

2) Commencing about 9 P. M. of said date, he was continuously interrogated by five or six police officers for a period of approximately five hours, until 2 A. M. the following morning, Monday, May 12th (311, 499, 502-537, 1061).

3) At 3 A. M. on Monday, May 12th, petitioner was locked in a cell in which there was no heat, no bed, no pillow and no blankets, but only a plain, narrow board hanging from the wall (306, 319, 549).

4) At 10 A. M. on Monday, May 12th, the questioning was resumed. The interrogation continued all day, with several detectives taking turns (328).

5) Members of defendant's family, his friends, and an attorney retained by the family, called at the station house where petitioner was kept and tried to get information concerning his whereabouts. The police officers knew the facts, but kept him incommunicado. The interrogation continued. No one, including his lawyer, was permitted to see him until he was arraigned 40 hours after being taken into custody (548, 1063-70).

6) During the afternoon of Monday, May 12th, two women and a man were brought in to face petitioner. He was not told that they were detectives. Each falsely pretended to identify him as the person who was sitting at the wheel of the automobile at the time of the shooting (83, 796-825, 835-853).

7) About 9 P. M., Monday, May 12th, twenty-seven hours after having been taken into custody, petitioner signed a confession (686-693). A second confession was thereafter given to a District Attorney a short time thereafter (870-875).

8) About 2:30 or 3 A. M. the following morning, Tuesday, May 13th, petitioner was placed under arrest (417).

9) Petitioner was brought before a magistrate later that same day, more than forty hours after having first been taken into custody (147, 1074). The arraignment could and should have been held long before that time. The police officers knew that the courts were open for that purpose (1105).

10) No evidence, other than the confessions heretofore referred to were offered at the trial to identify petitioner as a participant in the murder (1181).

In order to establish that our assertions are justified, and to avoid the necessity of a complete review of the

record, we quote briefly from the testimony of the People's witnesses:

Defendant was questioned for hours by relays of detectives:

"Q. And who did the questioning? A. I spoke to him for a while; Detective Manus spoke to him; Lieutenant Meenahan, and later on the captain of the Homicide Squad, Captain McGowan" (212).

* * * * * *

"Q. What time did this questioning begin, about? A. About nine o'clock" (213).

* * * * * *

"Q. Until what time? A. About two o'clock in the morning" (215).

* * * * * *

"Q. About how many came between the time you just said and the time you left? A. Detective Mitchell, Manes, Garvey, Lieutenant Meenahan, myself, Mitchell from the Homicide Squad, and then later on that night Detective Gavin, Captain McGowan and Captain Dowdell" (309).

* * * * * *

"Q. And by whom were the defendants questioned at that time? A. By Lieutenant Meenahan, Detective Kenny, Detective Mitchell and myself" (499).

* * * * * *

"Q. How many detectives were working up until 2 A. M. in the morning on this case? A. Just those that started at 5:15. There was myself, Kenny, Manes, Garvey and Mitchell" (1061).

* * * * * *

"Q. During all this time that I just related, there were at least a half a dozen detectives in the station house working on this particular case with you? A. Well, not Sunday evening.

"Q. Sunday evening you told us there were four besides yourself? A. Five of us, that is right. Then Monday morning there were quite a number of detectives there on other cases" (1140-1141).

* * * * * *

"Q. Would you say that at least the five that worked Sunday, with some additions, worked Monday? A. Yes, then we would add Captain Dowdell Monday and Captain McGowan Monday" (1141).

Defendant was kept in custody overnight with no sleeping facilities—a form of physical torture.

"Q. And at two o'clock in the morning, what if anything occurred? A. Put them back in the cells and I went home and went to bed and they went to sleep in the cells" (216).

* * * * * *

"Q. There were cots in the cells? A. There is a big bench" (216).

* * * * * *

"Q. Did you see the cells at the Lawrence Avenue station, the cells where they keep prisoners? A. Yes.

"Q. Personally? A. Yes.

"Q. Is there a bed in them? A. There is a big wooden bench where they lie down.

"Q. There is no bed? A. No spring and mattress.

"Q. Just a wooden bench? A. Yes.

"Q. No blankets or pillow? A. No" (306).

* * * * * *

"Q. Going back to the cells of the Lawrence Avenue station, did you personally see any blanket there that night? A. I did not" (319).

* * * * * *

"Q. Did you put him in a cell at the 62nd? A. I did.

"Q. Personally? A. Yes.

"Q. Each one in a separate cell? A. That is right.

"Q. Bonino and Caminito? A. That is right.

"Q. Was there a bench in that cell? A. There is.

"Q. No bed? A. No bed.

"Q. No blanket, no pillow? A. No" (548).

Defendant was not permitted to see members of his family or a lawyer who attempted to see him.

"Q. Did any police officer tell you that the family of Bonino or Caminito were around the 62nd Precinct Sunday night and making inquiry for them? A. I had seen some people there.

"Q. Did they speak to you personally? A. No.

"Q. Did anyone speak to you about the family desiring to see them? A. I know that there were some friends there. Whether they were family or friends, I know they were there.

"Q. They did not see the defendant? A. No, sir, they did not.

"Q. Nor the defendants them? A. No, sir" (1063-1064).

* * * * * *

The supervising police officer, John J. Meenahan, knew that petitioner's lawyer, as well as his family and friends, were trying to see him during the period of unlawful interrogation and detention.

"Q. So that until 2 A. M. on May 12, 1941, you, as the supervising officer, did not inform the District Attorney's office that you had three suspects at the station house? A. I did not."

* * * * * *

"Q. Up until 2 A. M. did any lawyer by the name of Spano make any inquiry from you, or in your presence from anyone, concerning his desire to see the defendants?

"The Court: That is a rather ambiguous question, isn't it? You mean did a lawyer by the name of Spano?

"Mr. Barshay: I said 'any lawyer by the name of Spano.'

"The Court: Yes.

"Q. A lawyer by the name of Spano? A. I had knowledge that he was making inquiries.

"Q. You had personal knowledge of that? A. I did.

"Q. And, Lieutenant, was he permitted to see the defendants? A. No, sir, he was not" (1068-1069).

• • • • • •

"Q. He did not see them, to your personal knowledge, until they were arraigned? A. That is right" (1070).

The police officers violated the statutes against unlawful delay in arraignment.

"Q. You knew the District Attorney's office was open 24 hours a day? A. I did" (1064).

• • • • • •

"Q. You knew that the Night Court was open Sunday night, May 11, 1941? A. Yes, sir, I knew that.

"Q. You knew there was the Felony Court open Monday, May 12, 1941? A. Yes, sir.

"Q. You knew there was a Night Court open May 12, 1941? A. That is right" (1106).

A period of 40 hours elapsed between taking the defendant into custody and arraigning him before a Magistrate.

"Q. Detective Mitchell, did you arrest the defendant, Santo Caminito? A. Yes, I picked him up for investigation.

"Q. At what time? A. On May 11th at about 6:00 P. M." (147).

• • • • • •

"Q. Were you present at the arraignment the following morning (Tuesday)? A. No, I was there until they were printed and booked, and then I did not see him after that" (1054).

• • • • • •

"Q. Lieutenant Meenahan, from May 11, 1941, until they were arraigned, May 13, 1941, did Lieutenant McNally work on this case with you? A. He was in and out of the office and he was working on other angles on the case" (1074).

• • • • • •

"Q. You knew they were not arraigned that morning (Monday)? A. Our investigation was not completed.

"Q. Captain, will you answer the question, please? You knew they were not arraigned? A. Yes" (1190).

• • • • • •

"Q. And then did you appear in the Felony Court the next morning (Tuesday)? A. Yes, I did" (1314) (from testimony of Joseph C. Spano; this is the only quoted testimony which was not given by a witness for the People).

The Court, in its incorrect charge, referred to a 36-hour delay (2189-2193). The Court was wrong. The delay was of 40 hours' duration, running from 6 P. M. on Sunday, May 11, to 10 A. M. Tuesday, May 13.

The petitioner was subjected to improper psychological pressure.

During the period of unlawful detention, petitioner was compelled to witness and submit to a police performance consisting of false identification. Three detectives falsely represented that they had seen petitioner at the scene of the crime. Quoting from the District Attorney's opening statement:

"The following morning the detectives decided something had to be done if they were going to get

> anywhere with this case. They thereafter sent to New York for two female detectives from the Pickpocket Squad and another detective named Gavin, who they thought looked nothing like a detective, and these defendants were placed in a room and one by one these witnesses, alleged witnesses, were brought in, and they ostensibly identified these defendants as perpetrators of the crime, although they were not actually witnesses to the crime" (82-83).

The testimony of the three detectives is lengthy and not quoted herein. It appears at folios 792 to 830, and 835 to 861 of the record.

There was no other proof of guilt.

Establishing the fact that there were no witnesses to the crime, and, therefore, that the coerced confessions constituted the sole basis for the conviction, we quote the following from the testimony of Police Captain John J. McGowan:

> "Q. I ask you now, of your own knowledge, up to the time that you came to the station house, is it not a fact that no eyewitness had identified any one of the defendants as committing this crime? A. No eyewitnesses had identified him" (1181).

The District Attorney's opening statement conceded that petitioner was not identified as a perpetrator of the crime:

> "I want to say further that the confession made by these people will be substantiated as to some of the details by the persons who were there at the time, although they cannot identify these people as the perpetrators of the crime" (89).

From the foregoing, and from a review of the record as a whole, it appears that ten different police officers and detectives participated in the questioning and false identification during the forty hours while petitioner was

held in custody without arraignment. This does not include members of the police force who were stenographers, and who likewise were present, nor the Assistant District Attorney who appeared late in the evening of Monday, May 12th.

We do not quote from the testimony of Joseph C. Spano, an attorney retained by defendant's family and who was given false information concerning petitioner's detention (1297-1332), nor the testimony of the several defendants to the effect that they were beaten, held without food, threatened and abused, nor the testimony of various members of the defendant's family to the effect that they made attempts to see defendant while he was in custody, but were likewise given false information.

The Federal Question Raised Below.

The basis upon which a review is sought in this court is the improper admission of confessions procured through coercion and duress during a period of illegal confinement before your petitioner was arraigned. At the trial, objection was made to the admission of such confessions at every conceivable stage, as will be demonstrated from the quotations set forth below. Counsel for petitioner objected:

1) At the time the confessions were first mentioned by a police officer;

2) When the confessions were offered in evidence;

3) After the confessions were admitted in evidence, by a motion to strike them from the record;

4) By exceptions taken to the Judge's charge with respect to said confessions.

To substantiate the contention that these objections were properly and timely made, we quote from the record of the trial:

> "Mr. Barshay: I move to strike out any admission made by the defendant Bonino or the defendant Caminito on the ground that it was obtained involuntarily.
>
> "The Court: There is nothing in this record yet of any admissions, sir, unless you want to make them" (484).
>
> • • • • • •
>
> "Mr. Barshay: • • • I ask your Honor to exclude the statement of the defendant Caminito on the ground that as a matter of law it is an involuntary statement. Take my exception.
>
> The Court: Yes, motion denied. Exception to defendant" (696-7).
>
> • • • • • •
>
> "Mr. Barshay: On behalf of the defendant Caminito and on behalf of the defendant Bonino, I move to exclude the reading of these statements to the jury on the ground that they were involuntarily obtained.
>
> "The Court: Motion denied.
>
> "Mr. Barshay: Exception."
>
> • • • • • •
>
> "Mr. Barshay: I have the same objection on the same grounds as before.
>
> "The Court: Objection overruled" (939).

The foregoing quotation must be read in connection with the objection made to the admission of the confession by a co-defendant, which objection reads as follows:

> "Mr. Barshay: I renew my motion on the same grounds, that it was involuntarily obtained.
>
> "The Court: Motion denied; exception to the defendant" (915).
>
> • • • • • •

"Mr. Barshay: First I move to strike out each confession submitted in evidence on the ground that each was obtained involuntarily and in violation of law.

"The Court: Motion is denied" (1212).

• • • • • •

"Mr. Barshay: Now I ask your Honor to dismiss the indictment on the ground that by competent legal proof the People have failed to present a prima facie case.

"The Court: Motion denied.

"Mr. Barshay: And I move to dismiss the indictment on the ground that the People have failed to prove the defendants Bonino and Caminito guilty beyond a reasonable doubt as a matter of law.

"The Court: Motion denied" (1214-1215).

The following is from the incorrect charge of the Court:

"An unnecessary delay, although prohibited by the provisions of Section 165 of the Code, does not exclude a confession, but may or may not affect its voluntary or involuntary character when considered with all the other evidence referring to this subject matter in question" (2192).

The Court denied proper requests to charge:

"Mr. Barshay: No. 14, sir.

(No. 14 reads as follows: "The conduct of the detectives in taking the defendant into custody and holding him in durance merely because he was suspected of the commission of an alleged crime, in order to obtain statements from him before formal complaint and arraignment and before he could see friends and counsel, is without legal sanction and that such circumstances are properly to be considered by the jury in determining the voluntariness of the alleged confessions of the defendants.")

"The Court: I refuse to charge except as I have already charged" (2231-2232).

Argument.

The principles of law which govern the disposition of this petition are thoroughly known to the Court. The decision of the New York Court of Appeals is completely inconsistent with the applicable cases decided by this Court. *Leyra v. Denno,* decided by the Supreme Court on June 1, 1954, is the most recent in a long line of decisions which reversed convictions procured through the use of confessions obtained by means of psychological pressures or physical torture or abuse, or where illegal detention for a long period of time occurred.

The applicable rule of law is clearly stated in the *Leyra* case:

> "The use in a state criminal trial of a defendant's confession obtained by coercion—whether physical or mental—is forbidden by the Fourteenth Amendment."

In our view, the opinions in the cases of *Leyra v. Denno,* and *Malinski v. New York,* 324 U. S. 401, in both of which cases this Court reversed the Court of Appeals of the State of New York, constitute sufficient justification for entertaining this application and for a reversal. In the *Malinski* case there was no question whatsoever as to the guilt of the defendant. Confessions made by him which were perfectly admissible were ample to justify the conviction. The reversal, however, was required as a matter of due process by reason of the admission of other confessions to the police, which confessions, in the view of the Court, were improperly obtained. In that case, as in this case, there were complaints that the defendant was subjected to physical violence. The Court disregarded that factor because it was disputed. It was not disputed, however, that the defendant in the *Malinski* case was held by the police from Friday morning, October 23, 1942,

until 4 A. M. on the following Tuesday, when he was arraigned. Defendant made two confessions to the police, one about 5:30 or 6 P. M. on the Friday when he was taken into custody. The second confession was made on Tuesday, October 27th. Both confessions were improperly admitted into evidence. The present case, however, is even more shocking than the *Malinski* case, in that this petitioner was kept totally incommunicado in spite of the fact that relatives and an attorney attempted to see him without success. In the *Malinski* case the defendant was permitted to consult with a friend.

We quote the following from the opinion of the Court in the *Malinski* case. From the majority opinion:

> "• • • the question whether there has been a violation of the due process clause of the Fourteenth Amendment is one on which we must make an independent determination on the undisputed facts.
>
> "If the attendant circumstances indicate that the confession was coerced or compelled, it may not be used to convict a defendant (*Ashcraft v. Tennessee*, 322 U. S. 143). And if it is introduced at the trial, the judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict (*Lyons v. Oklahoma*, 322 U. S. 596, 597" (p. 404).

Concerning the first confession, the Court referred to the fact that the claimed beatings were denied, stating:

> "Malinski was held incommunicado; he was not allowed to see a lawyer, though he asked for one, and he was not allowed to see friends with one exception" (p. 405).
>
> "• • • the confession of October 23rd was the product of fear—one on which we could not permit a person to stand convicted for a crime" (p. 407).

> "* * * we must consider the case, therefore, as one in which a coerced confession was employed to obtain a conviction. Coerced confessions would find a way of corrupting the trial if we sanctioned the use made of the October 23rd confession in this case. Constitutional rights may suffer as much from subtle intrusions as from direct disregard" (p. 410).

Accordingly, the Court refused to permit the first confession, made about 10 hours after the arrest, to stand. In the case at bar, it should be observed that the defendant steadfastly maintained his innocence for a period of 27 hours.

Concerning the second confession, the opinion of Mr. Justice Frankfurter states:

> "Considering the circumstances of Malinski's detention, the long and continuous questioning, the wilful and wrongful delay in his arraignment and the opportunity that that gives for securing, by extortion, confessions such as were introduced in evidence, the flagrant justification by the prosecutor of this illegality as a necessary police procedure, inevitably calculated to excite the jury—all these in combination are so below the standards by which the criminal law, especially in a capital case, should be enforced, as to fall short of due process of law" (pp. 417-418).

The *Leyra* and *Malinski* cases do not stand alone. They are but milestones in a long series of similar cases in which this Court has consistently held that due process is violated under circumstances such as exist in the instant case.

Extensive quotation from the applicable authorities appears unnecessary. Accordingly, we set forth briefly the conclusions reached in those cases which we consider most pertinent on their facts.

In *Chambers v. Florida,* 309 U. S. 227, the petitioners were subjected to continuous questioning for several days and were not permitted to see counsel, friends or relatives. This Court held that the confessions violated due process.

In *White v. Texas,* 310 U. S. 530, under similar circumstances, the Court again held that the confession was invalid.

In *McNabb v. United States,* 318 U. S. 332, the petitioners were arrested on a Thursday, between 1 and 2 A. M., and were questioned almost continuously until 2 A. M., Saturday morning, when they confessed. They were not permitted to see friends or relatives or attorney. The conviction was reversed.

In *Ashcraft v. Tennessee,* 322 U. S. 143, the petitioner was held incommunicado for a period of 36 hours before he was arraigned before a Magistrate. Despite the existence of evidence sufficient to convict without the use of confessions, it was held that there was a violation of due process.

In *Harris v. South Carolina,* 338 U. S. 68, it was again held that confessions procured prior to a delayed arraignment through systematic and persistent interrogation over long periods of time, in the absence of friends or relatives, was inadmissible as a violation of due process.

The same ruling was rendered in *Turner v. Pennsylvania,* 338 U. S. 62, and in *Watts v. Indiana,* 338 U. S. 49.

In *Haley v. Ohio,* 332 U. S. 596, the petitioner was arrested at midnight, October 19, 1945. He was questioned by the police for five hours without an opportunity to consult friend or counsel. After five hours, and after being shown confessions of others, he confessed. Thereafter, he was held incommunicado until October 23rd, when

he was taken before a Magistrate. The judgment of conviction was reversed as a violation of due process.

In *Upshaw v. U. S.*, 335 U. S. 410, petitioner was detained for 34 hours. The evidence shows that he was not physically mistreated, nor subjected to psychological pressure. Nevertheless, it was held that the confessions obtained during said time were wrongful and inadmissible.

We contend that this Court cannot overlook these compelling authorities. The fact that the defendant was held incommunicado for a period of forty hours before arraignment, that there was persistent interrogation over long periods of time by squads of police officers; that he was not permitted to see members of his family who inquired about him; that he was not permitted to see an attorney who had been retained for him; that he was kept overnight in a cell which had no sleeping facilities, that he was subjected to trickery and deceit by being confronted with false witnesses, all indicate without question that he was a victim of the type of psychological pressure which is totally inconsistent with the constitutional and statutory safeguards to which he was entitled. A review of the record shows that petitioner, after persistent questioning for many hours, was emotionally and physically exhausted. It is not surprising, therefore, that the so-called confessions are in substantial accord with the suggestions made to him by the detectives who questioned him.

Under the circumstances, the applicable rule to be followed should be consistent with this Court's determinations in the cases referred to herein. We see no difference between this case and the *Leyra* case, in which this Court said:

> "We hold that the use of confessions exacted in such a manner from a lone defendant unprotected by counsel is not consistent with due process of law, as required by our Constitution."

This defendant is serving a term of life imprisonment. Without the use of the confessions admitted in evidence against him, the conviction could not possibly stand. The confessions were procured in an illegal fashion. This Court has an opportunity to remedy what appears to be a serious injustice. We urge that it entertain jurisdiction on this application in order that justice may be accomplished consistent with the authorities in this Court.

WHEREFORE, petitioner, Santo Caminito, respectfully prays that a writ of certiorari may issue out of and under the seal of this Court, directed to the Court of Appeals of the State of New York, commanding the said Court to certify and send to this Court for review and determination as provided by law this cause and a complete transcript of the record and all the proceedings had herein, to the end that the judgment of the Court of Appeals of the State of New York affirming the judgment in this cause may be reversed and that the petitioner may have such other and further relief as to this Court may seem just and proper.

Dated: New York, N. Y., June 28, 1954.

MAURICE EDELBAUM,
Counsel for Petitioner.

MAURICE EDELBAUM,
STANLEY L. GLUCK,
Of Counsel.

State of New York,
County of New York, ss:

I hereby certify that I have examined the foregoing petition for a writ of certiorari and that in my opinion it is well founded and the cause is one in which the petition should be granted.

MAURICE EDELBAUM,
Counsel for Petitioner.

Sworn to before me this
28th day of June, 1954.
STANLEY L. GLUCK,
Notary Public,
State of New York
No. 24-1460950
Qualified in Kings County
Certs. filed with Co. Clk. N. Y. Co. and
Reg. Kings & N. Y.
Term Expires March 30, 1955.

APPENDIX.

Memorandum of Appellate Division of the Supreme Court, Second Department, December 22, 1942 (265 App. Div. 960).

> "Judgment unanimously affirmed. No opinion. Hagarty, Johnston, Adel and Taylor, J.J., concur; Lazansky, P.J., concurs, with the following memorandum: Refusal to charge as requested at folio 2231 was error. However, the significance of the error was overshadowed by emphatic statements in the charge of the law in respect of the same subject matter."

FILED
JUL 24 1954
HAROLD B. WILLEY, Clerk

No. 183

Submitted by
WILLIAM I. SIEGEL

Supreme Court of the United States

October Term, 1954

SANTO CAMINITO,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EDWARD S. SILVER
District Attorney
Kings County, New York

WILLIAM I. SIEGEL
Assistant District Attorney
of Counsel

32 CASE PRESS, 30 Ferry Street, N. Y. C.—COrtlandt 7-0484-0485

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Supreme Court of the United States

October Term, 1954

SAMUEL CAMINITO,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement

Petitioner seeks review of the judgment of the County Court of Kings County *dated March 2, 1942,* convicting him of the crime of MURDER IN THE FIRST DEGREE and sentencing him, by reason of the jury's recommendation of mercy (Penal Law, Sec. 1054-a), to life imprisonment. The judgment was affirmed by the Appellate Division of the Supreme Court, Second Judicial Department (265 App. Div. 960) and by the Court of Appeals (291 N. Y. 541). A motion for reargument made in person by petitioner in the Court of Appeals was denied (297 N. Y. 882) in 1948. A further motion for reargument made by counsel for petitioner was denied by the Court of Appeals on June 3, 1954 (not yet reported).

ARGUMENT

I.

The Court lacks jurisdiction to entertain the petition.

Petitioner's reliance on Section 1257 (3) and 2101 (c) and (d), Title 28, U. S. Code, Rule 38½ and Rule 22 of the Revised Rules of the Court, effective July 1, 1954, to establish jurisdiction on the part of the Court, is misplaced.

Section 1257 merely grants general jurisdiction to entertain the claim of a right under the Constitution, but this claim must be pressed within the time limits established by Statute and Rule. Section 2101 (d) expressly limits the time of application for writ of certiorari to review the judgment of a State Court in a criminal case to the period prescribed by the rules of this Court: 90 days after the entry of final judgment of the State Court of last resort as directed by Rules 22 and 38½.

Unquestionably the instant petition was not filed within such 90 days after the entry of the judgment. Petitioner affects to find an exception to the rule in the alleged fact that the New York Court of Appeals entertained and denied the motion for re-hearing and that, therefore, "the 90 day limitation during which this Court may entertain this petition begins to run from the date of such denial". He cites in support of this position *Citizens Bank of Michigan City* v. *Opperman*, 249 U. S. 448; *United States* v. *Seminole Nation*, 299 U. S. 417; and *Leishman* v. *Associated Electric Co.*, 318 U. S. 203. The resemblance between these and the instant case is more apparent than real, for in all of

them there occurred proceedings, illustrative of the doctrine announced in *Leishman, supra*:

> "In so holding that court recognizes the general rule that where a petition for rehearing, a motion for a new trial, or a motion to vacate, amend, or modify a judgment is seasonably made and entertained, the time for appeal does not begin to run until the disposition of the motion."

In actuality, however, petitioner's proceeding in the New York Court of Appeals was not, as he denominated it, a motion for re-argument of the appeal. The facts of the proceeding, when viewed in the light of the history of the case, disprove and discountenance the title given to it by petitioner.

In his moving papers, petitioner made the following points:

(1) That the trial court erroneously admitted his confession into evidence after refusing him an opportunity to offer evidence that the confession was not voluntary.

(2) That the trial court erred in not ruling as a matter of law that the confession was involuntary.

(3) That the trial court erroneously refused a request to charge on the subject of illegal detention.

An examination of the points raised both on the original appeal in the Court of Appeals, and on the 1948 motion for re-argument thereof, discloses beyond cavil or doubt that these points were identical with those asserted in the last, 1954, motion from the denial of which certiorari is now sought in this Court. Thus, on the appeal from the

judgment of conviction, petitioner's points were *in haec verba*:

(1) "The trial court erred in refusing appellant the opportunity to offer evidence that his confession was not voluntary before admitting the same in evidence."

The substance of the argument was that after appellant's counsel had examined a detective with respect to the voluntariness of the alleged confession, the Court refused to permit proof on the part of the defendant "as to whether or not the admissions were voluntary".

(2) "The trial court erred in not taking from the jury the question whether appellant's confession was voluntary."

The burden of this argument was that as matter of law the proof of coercion and delay in arraignment was so strong that the Court should itself have held the confession to have been involuntary.

(3) "The trial court erred in refusing to charge as requested on the subject of illegal detention."

The substance of this contention was that the charge as actually given by the trial court on this point did not sufficiently insure appellant's rights.

The identity of grounds on the last application in the Court of Appeals for re-argument with the contentions made on the appeal from the judgment and in the 1948 motion for re-argument can lead to but one conclusion: that petitioner's real purpose in moving in the Court of Appeals

in 1954 was not to procure re-argument. He could have had no hope of such result in view of the prior history of the case. On the contrary, his real—and sole—purpose is shown in the notice of motion which in its relevant part states that the motion is brought "for an order granting leave to the defendant-appellant to re-argue the appeal herein, *and for an order to amend the remittitur in the action to state the grounds of the decision of this Court in order to remove uncertainty, avoid litigation and make it appear to the Supreme Court of the United States, upon application for a writ of certiorari, whether or not a Federal question was necessarily decided.*" (Italics ours.)

The motion, it is obvious, was to the petitioner merely a necessary evil, an unavoidable procedural step in the sequence of steps made obligatory upon him by the rules of this Court. It was made only for the purpose—the abortive purpose—of tolling the Statute of Limitations (which in effect Rules 22 and 38½ are). That is, a motion which is merely denominated a motion for re-argument is shown by the record to have been in reality nothing but a motion to amend the remittitur.

That being so, the making of the motion in the Court of Appeals, and its denial, is ineffective to toll the statute and rules. This Court has so held in *Department of Banking* v. *Pink*, 317 U. S. 264, 87 L. Ed. 254. There, after affirmance by the New York Court of Appeals of an order of the Appellate Division, a motion was made on behalf of the Department of Banking in the Court of Appeals to amend the remittitur by adding to it the statement that a Federal question on which the petition for certiorari in this Court relied was presented and necessarily passed upon in the

Court of Appeals. The similarity with the instant case is obvious. As this Court said:

> "So far as appears, the motion did not seek a re-argument or re-hearing of any part of the case; it was no more than a request that the Court of Appeals declare what had in fact occurred upon its previous decision of the case."

The motion was granted and the remittitur amended by the Court of Appeals. Nevertheless this Court dismissed the petition for certiorari for want of jurisdiction, saying in a *per curiam* opinion:

> "Under the three-months limitation imposed by the statute, 28 USCA §350, the petition for certiorari is timely only if the amendment of the remittitur extended the time within which to apply for certiorari. We are unable to conclude that it had such effect. Unlike a motion for reargument or rehearing, it did not seek to have the Court of Appeals reconsider any question decided in the case. The final judgment already rendered was not challenged; what was sought was merely the court's certification that a federal question had been presented to it for decision, and this could have no different effect on the finality of the judgment than a like amendment of the court's opinion.
>
> A timely petition for rehearing tolls the running of the three-months period because it operates to suspend the finality of the state court's judgment, pending the court's further determination whether the judgment should be modified so as to alter its adjudication of the rights of the parties. Here no such alteration of the rights adjudicated was asked, and the finality of the court's first order was never suspended. Accordingly we must deny the petition

for certiorari on the ground that it was not filed within the time provided by law.

* * * * *

For the purpose of the finality which is prerequisite to a review in this Court, the test is not whether under local rules of practice the judgment is denominated final (Wick v. Superior Ct., 278 U. S. 575, 73 L. ed. 515, 49 S. Ct. 94; Cheltenham & A. Sewerage Co. v. Pennsylvania Pub. Utility Commission, No. 160, decided October 12, 1942, 317 U. S. 588, post, 482, 63 S. Ct. 38), but rather whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court (see Gorman v. Washington University, 316 U. S. 98, 86 L. ed. 1300, 62 S. Ct. 962). Where the order or judgment is final in this sense, the time for applying to this Court runs from the date of the appellate court's order, *since the object of the statute is to limit the applicant's time to three months from the date when the finality of the judgment for purposes of review is established.*" (Italics ours)

There is an additional ground, we submit, why this petition should be dismissed. The proceeding is fatally tainted with laches. Petitioner failed to move in the Court of Appeals in any fashion during the period from July 29, 1943 when that Court affirmed the judgment of conviction, until his first motion for re-argument almost five years later, nor did he in that same period bring on any petition in this Court. Similarly a further period of over five years intervened with complete inaction on his part either in the Court of Appeals or in this Court. To permit him now to invoke statutes and rules, the express purpose of which is clearly to compel celerity of action and to bring about

finality of judgment, would be to make a travesty of these very provisions of statute and rule and to introduce and compound chaos in the administration of the criminal law.

The record of petitioner's trial in the State Court discloses that the trial was fair under every view and requirement of due process. To subject the State of New York now to the additional burden of an unnecessary defense of its procedures at this late date would be to do that which this Court by Cardozo, *J.* warned against in *Snyder* v. *Massachusetts,* 291 U. S. 97, 122, 78 L. Ed. 674, 687, 54 S. Ct. 330, 90 A. L. R. 575:

> "There is danger that the criminal law will be brought into contempt—that discredit will even touch the great immunities assured by the Fourteenth Amendment—if gossamer possibilities of prejudice to a defendant are to nullify a sentence pronounced by a court of competent jurisdiction in obedience to local law and set the guilty free."

II.

The petition should be denied for want of jurisdiction.

Dated: Brooklyn, New York,
July 1954.

Respectfully submitted,

EDWARD S. SILVER
District Attorney
Kings County, New York

WILLIAM I. SIEGEL
Assistant District Attorney
of Counsel

30/14

FILED
AUG 2 1954
HAROLD B. WILLEY, C

Supreme Court of the United States

October Term, 1954.

No. 183.

SANTO CAMINITO,

Petitioner,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

Reply Brief in Support of Petition for Writ of Certiorari.

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MAURICE EDELBAUM,
STANLEY L. GLUCK,
Of Counsel.

THE REPORTER COMPANY, INC., New York 7, N. Y.—REctor 2-6978—1954

Supreme Court of the United States

OCTOBER TERM, 1954,

No. 183.

SANTO CAMINITO,
Petitioner,
against
THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

In the light of a convincing demonstration of a violation of due process on factual and legal grounds, the District Attorney of Kings County rests his opposition to this petition on a technical objection to jurisdiction. The objection is specious.

The petition discloses with precision the factual details upon which we believe the legal conclusion must rest, that this petitioner was denied due process of law. It likewise reviews the authorities which sustain that conclusion.

In answer, the brief submitted in opposition glibly concludes:

> "The record of petitioner's trial in the State Court discloses that the trial was fair under every view and requirement of due process."

In our opinion the aforesaid conclusion is not justified by the record. In any event, the ultimate determination as to whether or not there was due process is one for this Court, not for the District Attorney.

The District Attorney's only argument in opposition to this petition is addressed to the question of jurisdiction.

His argument proceeds as follows:

1. That the ninety-day limitation within which petitioner may apply for certiorari has expired because, he says, the petitioner's motion for a re-argument in the Court of Appeals of New York was not a motion for re-argument.

2. To compel the District Attorney to establish the fact that there was compliance with all of the requirements of due process is too great a burden to impose upon a responsible public official.

With respect to the ninety-day period of limitation:

It was clearly pointed out in the petition, and the record shows, that a motion for re-argument was made in the New York Court of Appeals and that the motion was entertained and denied on June 3, 1954. A certified copy of the order of denial is part of the record before the Court. The present petition was filed in this Court on July 1, 1954. Accordingly, under the cases cited on page 3 of the petition, the application is timely.

The only case cited in the brief in opposition, *Department of Banking v. Pink,* 317 U. S. 264, sustains the petitioner's view. In that case the motion in the New York Court of Appeals was merely to amend the remittitur. No question of substance was raised. No request was made that a determination of rights previously adjudicated be altered. Here the situation is exactly the opposite. Serious constitutional questions were presented to the Court of Appeals on the motion for re-argument, and the motion sought a reversal of the determination previously adjudicated by that Court.

In order that there may be no question about the statement thus made, we quote the first two paragraphs of the printed brief submitted to the Court of Appeals in support of petitioner's motion for re-argument:

> "The appellant, Santo Caminito, moves this Court for re-argument of an appeal heretofore taken by him to this Court from a judgment of conviction of murder in the first degree, under which he was sentenced to State Prison for the term of his natural life (63).
>
> "The basis for the motion is that this Court overlooked or misapprehended basic constitutional rights of the appellant in affirming a judgment which rested solely upon a confession obtained through duress during a period of unlawful detention, without arraignment."

Accordingly, giving due consideration to the nature of the relief sought in the Court of Appeals, the following language in *Department of Banking v. Pink* determines the jurisdictional question before the Court:

> "A timely petition for rehearing tolls the running of the three-months period because it operates to suspend the finality of the state court's judgment, pending the court's further determination whether the judgment should be modified so as to alter its adjudication of the rights of the parties."

There can be no doubt that the application for re-argument in the Court of Appeals was timely. Rule XX of the Rules of the New York Court of Appeals, dealing with motions for re-argument, places no restriction upon the time within which the motion may be made. That Court entertained the motion to re-argue and denied the motion.

The District Attorney, in arguing that the 1954 application to the Court of Appeals was not, in fact, a

motion for re-argument asserts that the points raised by petitioner on the motion to re-argue were identical with the points raised on the appeal from the judgment of conviction. The District Attorney is in error. The points argued on the *original* appeal to the Court of Appeals are correctly stated as items 1, 2 and 3 on page 4 of the District Attorney's brief. However, the same points were not made on the 1954 motion for re-argument, which was decided on June 3, 1954. Only one point was made on said motion, which point reads:

> "The admission of the confession as the sole basis for the conviction, constitutes a deprivation of defendant's liberty without due process of law."

The argument is not identical with the points raised on the original appeal. In order that this Court shall not be in doubt concerning these facts, we are forwarding to the Clerk of this Court, together with this reply brief, a copy of the notice of motion and brief submitted to the New York Court of Appeals in support of the motion for re-argument in that Court.

The burden imposed upon the District Attorney:

The learned District Attorney argues, on page 8 of his brief in opposition, that he should not be subjected to a defense of the procedures on the trial. The District Attorney should welcome the opportunity to establish, once and for all, that the procedures employed in this case—if such be the fact—were in total compliance with the constitutional safeguards afforded to every person accused of a crime. What the District Attorney says in effect is this: "We would prefer not to do the work involved in establishing that there was due process. Let the defendant, therefore, remain in jail for the rest of his life."

We recognize that a point is reached where litigation must be terminated. However, whatever the reason may be, there has never been in this case a Federal determination of the substantial Federal constitutional questions raised in this petition. Such a determination should be available to petitioner, whether it come about through the granting of this application for certiorari, or through the medium of a new *habeas corpus* application submitted to a Federal District Court. Questions as serious as those presented on this petition should not be disposed of by default.

There is no merit to the opposition to this petition, on legal, factual, moral or even technical grounds.

We urge that the petition be granted.

Dated: New York, N. Y., July 29, 1954.

Respectfully submitted,

MAURICE EDELBAUM,
Attorney for Petitioner.

MAURICE EDELBAUM,
STANLEY L. GLUCK,
Of Counsel.